

**JOINT LEGISLATIVE SUNSET
REVIEW COMMITTEE FINDINGS AND
RECOMMENDATIONS**

**Review and Evaluation of the
Court Reporters Board**

**Report to the
Department of Consumer Affairs**

APRIL, 1998

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

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IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE COURT REPORTERS BOARD

ISSUE #1. Should the State's licensing of Certified Shorthand Reporters (CSRs, or Court Reporters) and the Court Reporters Board be continued?

Recommendation: *The Department recommended that the Legislature sunset the Court Reporters Board and licensing of certified shorthand reporters, and the oversight by the Board of the shorthand reporting schools, by July 1, 1999. If this recommendation was adopted by the Joint Committee, then Committee staff recommended creating a title act (certification program) for shorthand reporters under the Department, by July 1, 1999. It was also recommended that oversight of the schools should be maintained by the Department's new Bureau of Private Postsecondary and Vocational Education.*

Vote: *The Joint Committee did not adopt the recommendations of the Department and Committee staff. The Joint Committee adopted a substitute recommendation by a vote of 5-1, to extend the sunset of the Court Reporters Board for two years, to July 1, 2001.*

Comment: Certified Shorthand Reporters have been required to be licensed in California since 1951. Today, there are approximately 8,150 CSRs licensed in California. According to the Board, between 1,200 and 1,500 of them work directly for the courts. The primary consumers of court reporters' services are judges and court administrators, attorneys, and (to a lesser extent) administrative hearing officials who rely on court reporters to provide accurate and timely transcripts of court proceedings, depositions, and verbatim records of similar types of testimony. While court officials and attorneys are the direct "consumers" of court reporters' work product, it is the plaintiffs and defendants in civil and criminal cases who ultimately depend on accurate transcripts of legal proceedings. There are approximately 26 states which do not regulate court reporting services, 10 states require certification (title act), and 16 states which require court reporters to be licensed. There are 7 states that have voluntary testing, usually through their private state association.

The Department indicates that non-state certified shorthand reporters perform functions for state and district attorneys identical to certified reporters, without any indication of resultant problems. (Two similar occupations -- tape recording operators and videographers -- are also currently unregulated in California.) The Department further

argues that the legal profession, as a sophisticated consumer of these services, can weed out the incompetent reporters and will likely rely on private certification. Certification is already available in the private sector through the National Shorthand Reporters Association. Untimely transcripts, the primary complaint, can be addressed directly by providing significant financial sanctions to be enforced in, presumably, small claims courts.

Although the Department asks the Joint Committee to consider a private certification program modeled after the “Interior Designers Certification Program” or the “Taxpreparers Education Council,” Committee staff does not believe that complete deregulation of this program is appropriate. One of the primary reasons, is the involvement of the State in providing low income litigants in civil cases with court reporting services through the Transcript Reimbursement Fund. Part of the fees provided to the Board by court reporters are used to subsidize this fund. It would not be appropriate for a private organization to operate this fund. Committee staff also believe that some level of regulatory oversight should still be provided, both through the education and examination of court reporters. However, whether a licensing program and independent board is still necessary to perform these functions is questionable.

Factors which the Joint Committee staff took into consideration are as follows:

- (1) A licensing program (or practice act) is the most restrictive form of regulation by the State. Unless there is clear evidence that this occupation poses a serious risk to the consumers’ life, health, safety or economic well-being, some other form of regulation should be considered, such as a certification program (title protection) or registration program. At this point, it is not clear, as indicated by the Department, that continued licensure is necessary. However, if State oversight is to continue with specified requirements for State certification, then a title act should be considered. A title act would not restrict the ability of non-certified court reporters to provide services, but it would assure, for those who choose to use State certified court reporters, that they have met certain qualifications. A title act may also be appropriate, since there are growing number of persons who are providing court reporting type-services but are currently exempt from the licensure act.
- (2) The Court Reporters Board has few complaints and disciplinary actions. The Board receives an average of 100 complaints a year against court reporters, primarily for failing to produce a transcript or failing to produce a timely transcript. Many of these cases are handled informally by the Board rather than being referred for disciplinary action.
- (3) The Board recently conducted a “customer survey” which produced information indicating that only 25% of its consumers -- judges, attorneys, and court administrators -- were even aware of the existence of the Court Reporters Board. And for the 25% percent who were aware of the existence of the Board, only 64% of those knew that the Board handles complaints and conducts investigations based on those complaints.
- (4) There is also some indication that the Board has created, or allowed to continue, a significant barrier to entry for those graduating from shorthand reporting schools. Or has failed to provide adequate oversight of court reporting schools as required under Section 8027 of the Business and Professions Code. The state examination required by the Board has consistently had a low passage rate, sometimes under 30%. Most recently, the

May/November 1997 examination only showed on average 15% of applicants passing the exam who graduated from court reporting programs. There was a consistent failure rate for all court reporting schools. (One school did not generally show greater failure rate than another.)

The Joint Committee had cautioned the Board about the low passage rate of its exam during its first review in 1995. The Board now blames the training provided by the court reporting schools as a factor in the high failure rate on their test. However, since the Board has direct oversight of court reporting schools, it would appear as if the Board has failed in its responsibility to assure that schools are providing graduates with the necessary course of instruction to pass the state exam. If schools have been negligent or derelict in their duty to provide students with the education necessary to qualify as a shorthand reporter, as the Board seems to claim, then the Board should have taken appropriate action. There is no indication that the Board has ever denied approval of a court reporting program in California, nor brought this problem to the attention of the Legislature. Future oversight of court reporting schools could be sufficiently provided by the Bureau of Private Postsecondary and Vocational Education under the Department.

ISSUE #2. Should the Court Reporters Board, as it recommends, be given legislative authorization to license currently-unregulated persons who operate electronic recording devices, who transcribe electronic recordings, or who own or operate shorthand reporting agencies?

Recommendation: *Both the Department and Committee staff recommended, that prior to the creation of any new licensure category, proponents should still be required to meet the mandates of Section 9148 et seq. of the Government Code. (This is a “sunrise process” similar to the current sunset review process of this Committee.) This law enables the Legislature to properly evaluate the merits of the regulatory proposal.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: In the past, the Court Reporters Board has not proposed any new occupational categories for licensure, but now believes testing and licensing for electronic tape operators, videographers, and court report firm owners should be considered.

During every Legislative Session, bills are introduced to create a new or additional licensure or regulatory program. Often these proposals are not carefully substantiated, or represent only a very small number of potential licensees. This results in discussion over whether there is a need to regulate this particular professional group, and the appropriate location for this new licensure program within an existing agency, or the need to create a separate regulatory board or committee.

The current law, Section 9148 et seq. of the Government Code, and the rules of the Senate Business and Professions Committee, require proponents of such proposals to go

through a “sunrise” process, similar to the sunset review process, where proponents of the new licensure program must provide justification and substantiation for the new licensure classification. This enables the Legislature to determine the public need for such a regulatory program, and the degree of regulation necessary. It also enables any affected persons and related occupational groups to carefully assess the impact of the proposal prior to consideration in the legislative process, so that Legislators can be provided with a thorough and balanced evaluation. Any new proposals for regulatory oversight by the Court Reporters Board should be required to go through this process.

ISSUE #3. Should the Court Reporters Board be required to revise its test plan in order to increase the passage rate on its examination? Should a fee increase for its examination also be considered so that it may offer the exam more than twice a year?

Recommendation: *The Department did not address this issue. Committee staff recommended that the Board present to the Joint Committee by October 1, 1998, an assessment of all of the possible causes of the low pass rate for its exam and recommendations to improve the pass rate. The Board should also present a plan to offer both the written and dictation portions of the licensing exam more than twice per year, and substantiate the need to increase the exam fee.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The problems with the low passage rate of the Board’s examination have already been discussed. The Board indicated that it did conduct a job analysis of its examination in November 1995 and adopted the validation report at its January 1996 meeting. The results provided the basis for the Board’s Test Plan. However, the low passage rate still continues to spiral downward. If there is a problem with the schools and/or the examination then the Board needs to propose changes and revise its test plan if necessary.

Offering the exam only twice per year -- once in northern California and once in southern California -- may cause unnecessary inconvenience and expense for examinees (especially since this exam has many repeat takers). Approximately 600 people take some, or all of the three-part exam each time it is offered. A person who does not take the entire exam, or who does not pass one or more parts of the exam (usually the dictation part of the exam), must then wait six months to take or re-take parts of the exam not passed. This amount of time seems excessive and supports the argument that more frequent testing is appropriate if it can be done efficiently. Two of the three parts of the exam are “written” and could be offered frequently at numerous locations by using the Department’s computerized testing. However, the Board should also give consideration to providing the practical demonstration of dictation and transcription skills more often, since this is the portion of the exam which is frequently failed.

ISSUE #4. Should funding be provided, as recommended by the Board, to implement a public education and awareness program for consumers regarding the roles and duties of the Court Reporters Board?

Recommendation: *No recommendation at this time.*

Comment: In response to this relatively low level of awareness of the Board's existence and functions, as evidenced from its "customer survey," the Board developed a plan to communicate more effectively with those customers, and submitted a Budget Change Proposal request for \$40,000, for approval of limited-term funding for two years. The Board states that approval of this proposal would permit it to design and implement a Public Communication and Education Program, and require the Board to report back to the Legislature and the Administration on its effectiveness, before ongoing funding would be provided. Since this Court Reporters Board is being considered for sunset, it does not appear appropriate at this time to approve any increased spending for this Board.